

REMARKS

Claims 1-65 are pending in this application.

ELECTION/RESTRICTIONS

The Examiner has required election under 35 U.S.C. § 121 to one of the inventions of groups I to IV.

In order to be fully responsive, Applicant hereby elects with traverse the invention in group I. Currently pending claims 1-7, 12-25 and 50-65 are readable on the elected invention.

Contrary to the Examiner's allegation, the inventions of groups I:IV and II:III are connected in design, operation, and/or effect. In particular, the claims in invention I are directed to a composition comprising decellularized bone marrow extracellular matrix, and the claims in invention IV are directed to a medical device comprising decellularized bone marrow extracellular matrix. The claims in invention II are directed to a method for treating a tissue or organ comprising implanting or injecting into a subject decellularized bone marrow extracellular matrix, and the claims in invention III are directed to a method for reconstructing or augmenting a tissue or organ comprising implanting or injecting into a subject decellularized bone marrow extracellular matrix. Essentially, the decellularized bone marrow extracellular matrix used in the composition of invention I is the same as the decellularized bone marrow extracellular matrix used in the medical device of invention IV. Likewise, the decellularized bone marrow extracellular matrix used in the method of invention II is the same as the decellularized bone marrow extracellular matrix used in the method of invention III. As such, the two inventions I and IV are connected in design, and the two inventions II and III are connected in design.

Even assuming *arguendo* that the subject matter of inventions I:IV and II:III are distinct or independent, Applicant submits that to search the subject matter of any one of inventions II, III or IV would necessarily require the search of the subject matter of invention I and therefore, would not constitute a serious burden to the Examiner.

The M.P.E.P. § 803 (Eighth Edition, Revision 3, August 2005) states:

If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to distinct or independent inventions. (emphasis added)

In view of this provision, even if for argument sake, the subject matter of inventions I:IV and II:III are distinct or independent, the subject matter of these inventions would

necessarily be searched and examined in the search of the subject matter of the elected invention I. Since the search of the subject matter of inventions II, III and IV would not be a serious burden on the Examiner, Applicant respectfully requests that all four inventions be examined together.

The Examiner has also required species election under 35 U.S.C. § 121 to a specifically named biological material as recited in the Markush group of claims 7, 23, 47 and 61.

In order to be fully responsive, Applicant hereby elects with traversal the species vascular endothelial growth factor (VEGF). Currently pending claims 1-65 are readable on the elected species.

Upon the allowance of linking claims, the restriction requirement as to the linked invention shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) should be entitled to examination in the instant application. Also, upon the allowance of product claims, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claims should be rejoined in accordance with the provisions of M.P.E.P. § 821.04. Finally, upon allowance of a generic claim, claims drawn to unelected species that include all the limitations of the generic claim should be allowable.

Applicant fully reserves the right to prosecute the subject matter of the non-elected inventions in one or more related applications.

Applicant also reserves the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

Applicant respectfully requests that the above remarks be entered and made of record in the file history of the instant application.

Respectfully submitted,

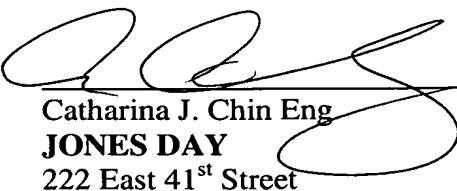
Date: February 6, 2006


Gidon D. Stern

27,469

(Reg. No.)

By:


Catharina J. Chin Eng
JONES DAY
222 East 41st Street
New York, New York 10017
(212) 326-3939

42,412

(Reg. No.)